WP(C) 5057/2006
BEFORE
THE HON'BLE MR JUSTICE RANJAN GOGOI

Heard Mr.M.Pertin, learned counsel for the petitioner and Mr.B.B anerjee, learned Govt. Advocate, Arunachal Pradesh.

Mr.U.J.Saikia, learned counsel for the Respondent No.2 submits that as hi s name was not shown in the Cause List he could not prepare himself for the hear ing. However, as the order passed on the previous date i.e. on 3.1.2007 was in t he presence of the learned counsel for the Respondent No.2 and it was agreed, in presence of all the learned counsels for the parties, that the Court may dispos e of the case on the next date fixed i.e. today, I am of the view that the heari ng of the case should not be deferred.

The petitioner Shri Tanu Leriak, who is an Executive Engineer of the Rur al Works Department was transferred from the Office of the Chief Engineer at Ita nagar to Changlang. One Shri T.Gogoi, who was working as the Executive Engineer at Changlang was transferred to the Chief Engineer's Office in place of the peti tioner. This was done by the an order dated 17.7.2006. The petitioner, thereafte r, took charge of the Office of the Executive Engineer, Changlang from Shri T.Go goi on 31.7.2006. By the aforesaid order dated 17.7.2006 the Respondent No.2, Sh ri K.K.Hazarika, was also transferred on promotion to Pasighat as the Executive Engineer. Thereafter, by the impugned order dated 19.9.2006 the Respondent No.2 has been transferred from Pasighat to Changlang in place of the petitioner and the petitioner, in turn, has been transferred from Changlang to Pasighat in plac e of Respondent No.2. Aggrieved, this writ petition has been filed.

Under the transfer policy in force in the State of Arunachal Pradesh the normal 'tenure' of a Govt. Servant in any one station is presently 4 years. The main thrust of the petitioner's case, therefore, appears to be that his transfe r made by the impugned order dated 19.9.2006 having followed a 'tenure of less then 2 months at Changlang, the said transfer is contrary to the transfer polic y in force in the State.

As time and again it has been understood by the Courts that the transfer policy framed by a State Govt. particularly the norms relating to 'tenure' in any parti cular station are mere guidelines and there is really no right of any fixed ten ure vested in a civil servant, this Court had desired to know the reasons for th e transfer of the petitioner and the Respondent No.2 as made by the impugned ord er dated 19.9.2006. This was so done to ascertain as to whether there are suffic iently good, acceptable and convincing reasons for the transfer of the petitione r and the Respondent No.2 within a period of about 2 months after previous posti ngs.

The records required to be placed before the Court have been so placed by Shri B.Banerjee, learned Govt. Advocate, Arunachal Pradesh. The said records reveal t hat as far back as on 24.6.2006 there was a request from the MLA of No.53 Changl ang (North) Assembly Constituency for the posting of the Respondent No.2 as the Executive Engineer at Changlang. As in spite of the said request there was a mov e to transfer the petitioner to Changlang, a joint note was addressed to the Ch ief Minster of the State by the MLAs representing No.53 Changlang (North) Legisl ative Constituency and No.52 Changlang (South) Assembly Constituency as well as the Speaker of the Legislative Assembly and a Minister of the State Govt. for th e posting of the Respondent No.2 at Changlang . On the basis of the said note, a n order was passed by the Chief Minster on 17.7.2006 for the posting of the Resp ondent No.2 at Chaglang. However, by that time the transfer order dated 17.7.200 6 was already issued and the petitioner was posted at Changlang. In such circums tances, the matter was again reopened and processed and on the basis of another order of the Chief Minister dated 13.8.2006 in the file, the impugned order dat

ed 19.9.2006 was issued posting the Respondent No.2 was posted at Changlang and the petitioner at Pasighat.

This Court should not be understood to have said and meant that the elected representative(s) of the People can never have a say as to which Officer should be posted in a particular station within the Constituency. If such a request is made, and the same is in public interest, surely the views expressed by such elected representative(s) must receive due consideration. An elected representative of the People is expected to have the interest of the Constituency upper most in his mind and if in public interest or in the interest of the developmental works or for the efficiency of administration a recommendation is made with regard to posting of a particular officer, surely such recommendation must receive due consideration.

In the present case what the Court finds is that the transfer of the petitioner and the Respondent No.2 by the impugned order dated 19.9.2006 had been made at the request of several elected Representatives of the People. A reading of the notes available on record is also suggestive of the fact that such recommendations were made keeping in mind the perception of the elected representatives with regard to the efficiency of the Respondent No.2 and his fitness to serve at Changlang. However, while accepting such recommendation and in ordering the inter se transfer of the petitioner and Respondent No.2 what could not be ignored by the decision maker is the fact that the writ petitioner had already been transferred to Changlang by the earlier order dated 17.7.2006 and that he had joined at Changlang on 31.7.2006. In the said facts, the decision maker could not have safely ignored the transfer policy of the State which visualizes a tenure of 4 years for the petitioner at Changlang. The petitioner certainly does not have a right to remain at Changlang for 4 years ; he can be moved earlier but such movement has to be necessitated by strong and compelling reasons and dictated by the needs of administration. In a situation where the petitioner is yet to display his administrative competence and skills at Changlang for which he needed to be given some more time, the correct course of action for the decision maker would have been to withhold the requests of the elected representative(s) for some time and allow the petitioner to discharge his duties at Changlang . After all, the decision maker must take into account the legal rights and expectation of both the parties likely to be affected by its order. The decision maker has to be careful in balancing the competing interest of the parties before taking its decision in any matter. In the present case, such an exercise does not appear to have been performed and in a manner that can generate satisfaction in the Court. Consequently, an element of arbitrariness has crept into the decision leaving the Court with no option but to interfere with the impugned order dated 19.9.2006.

For the aforesaid reasons I allow this writ petition and set aside the impugned order dated 19.9.2006.